

**Application No.** : **10/735,260**  
**Filed** : **December 11, 2003**

REMARKS

Claims 57 – 73 were pending in the application. By this paper, Applicant has canceled amended Claim 57. Accordingly, Claims 57 – 73 are presented for examination herein.

5    *Drawings*

Applicant submits herewith formalized drawings in compliance with 37 C.F.R. § 1.84. Applicant submits that no new matter has been entered by virtue of the submission of these formalized drawings.

10    *§112 Rejections*

1.    Per page 2 of the Office Action, Claims 57 – 73 each stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In response thereto, Applicant provides the following remarks:

15    **Claim 57** – Per page 2 of the Office Action, the Examiner argues that the recited limitation “*A most significant bit and a least significant bit of said symbol indicate a type of said symbol*” is not supported by Applicant’s specification as filed which the Examiner argues is persistently non-descriptive and non-specific. Applicant respectfully disagrees. Applicant notes that paragraph [0027] recites in pertinent part:

20    “*a method that protects symbol types by characterizing symbols (act 300) as one of two types – DATA or NON DATA, generating a symbol characterization bit (act 302), placing the symbol characterization bit at both ends of the symbol (act 304)...*”. {emphasis added}

25    In other words, depending on the characterization of the symbol to be transmitted (i.e. data or non-data), a symbol characterization bit is placed at both ends of the symbol; i.e., the most significant bit and least significant bit of that particular symbol.

Furthermore, paragraph [0029] of Applicant’s specification goes on to use the specific  
30 terminology used by Applicant in the Claim 57 invention when it states:

“*In the case of symbols A and B, the control encoding can be distinguished from request encoding and be completely determined from the more significant five bits*

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*after the most significant type bit, and in the case of C and D, from the less significant five bits before the less significant type bit.”* {emphasis added}

Accordingly, Applicant is respectfully requesting clarification as to why the Examiner has  
5 alleged that “*nowhere in the specification does the applicant teach, ‘A most significant bit and a least significant bit of said symbol indicate at least a type of said symbol’*” as set forth at page 2 of the Office Action.

With regards to the Examiner’s allegations that the written description persistently uses non-descriptive, non-specific language, Applicant also respectfully disagrees. In the present  
10 Office Action, the Examiner has only provided a single limitation at issue which Applicant submits is clearly supported by Applicant’s specification as filed as evidenced above. If there are other issues that the Examiner would like to address in Applicant’s specification, Applicant respectfully requests that the Examiner specifically point them out, and provide express findings of fact that support the Examiner’s conclusions. See e.g. MPEP § 2163.04.

15       Applicant further submits that Claim 68 also satisfies the written description requirement of 35 U.S.C. § 112(1) based on similar reasoning.

Accordingly, withdraw of the foregoing rejections is requested.

2.       Per page 4 of the Office Action, Claim 57 stands rejected under 35 U.S.C. §112,  
20 second paragraph, as failing to particularly point out how the encoding increases the reliability of the transmitting data. In response thereto, Applicant provides the following remarks:

25       **Claim 57 –** By this paper, Applicant has amended Claim 57 to provide additional precision as to how the encoding increases the reliability of the transmitting data by amending  
Claim 57 so that it now recites in pertinent part:

30       *57. A method of protecting symbol types transmitted across a communication medium ... wherein said encoding protects symbol types, as a single byte error cannot affect both said most significant bit and said least significant bit of said symbol.”*

Support for Applicant’s amendment can be found at paragraph [0027] of Applicant’s specification as filed [“*Thus, a single byte error ... cannot affect both type bits in a single*

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*symbol.”] Further explanation of how this works in a disclosed embodiment can also be found at, *inter alia*, paragraph [0030] of Applicant’s specification as filed along with Tables 1 and 2 cited in paragraph [0030].*

Accordingly, Applicant submits that Applicant’s amendment to Claim 57 overcomes the

5 Examiner’s rejection under 35 U.S.C. § 112(2).

### *§101 Rejections*

3. Per page 4 of the Office Action, Claims 68 – 73 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Specifically, the Examiner alleges Claim 68  
10 recites apparatus ... reasonably interpreted as software and therefore sets forth functional descriptive material *per se*, which is non-statutory. Applicant respectfully traverses the Examiner’s contention.

For example, Applicant has set forth and claimed “*a second module to transmit the encoded symbol across the communication medium {apparatus}.*” Applicant submits that such a 15 module cannot be implemented only as a computer program *per se*, and would necessarily require hardware to, *inter alia*; place the encoded symbol onto the communication medium. For example, paragraph [0022] of Applicant’s specification as filed sets forth one potential implementation of a “second module” to transmit encoded symbols, and recites in part:

20       “*PHY 106 preferably includes PHY-Link interface 108, port controller 110, packet transmit/receive 112, BOSS arbitration and control state machine 114, one or more port logic units 116, and physical media dependent (“PMD”) electronics unit 118 for each port 116. Each port 116 can be used to couple the nodes to another node in the network. Multiple ports can be included within each node.*  
25       *Although two ports 116 are shown in the preferred embodiment of FIG. 3, the number of ports is not important for the present invention. Each port 116 couples to a PMD 118 that provides the necessary electrical interface to the particular physical communications medium.*” {emphasis added}

30 Accordingly, Applicant submits that characterizing Claim 68 as setting forth purely functional descriptive material *per se* is unsupported not only by the claim language that recites an “*apparatus*” but by Applicant’s specification as filed as well.

Therefore, Applicant respectfully requests the Examiner’s rejection of Claims 68 – 73 under 35 U.S.C. § 101 as being directed to non-statutory subject matter be withdrawn in light of

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Applicant's recitation of an apparatus accompanied by Applicant's description of the hardware necessary to transmit symbols across a communications medium.

### *Other Remarks*

5        Applicant hereby specifically reserves all rights of appeal (including those under the Pre-Appeal Brief Pilot Program), as well as the right to prosecute claims of different scope in another continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention and not for 10 purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely  
15 to such claim or claims.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES, PC

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